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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulatd in accordance with Economic and Social Council resolution 1996/31.

[29 December 1999]

GE.00-10747 (E)

Enforced and involuntary disappearances in Sri Lanka

1. In the communications of the Asian Legal Resource Centre (ALRC) and the Asian Human Rights Commission (AHRC) we have exposed the situation relating to disappearances in Asia and, in particular, in Sri Lanka.

2. According to the United Nations Working Group on Enforced or Involuntary Disappearances, Sri Lanka is second only to Iraq in terms of the number of disappearances in a country. In terms of official statistics three Government-appointed commissions have reported on about 26,000 cases of disappearances. A further commission, which is still continuing inquiries into another 10,000 cases, has completed inquiries on about 4,000 cases. The Government claims that the prosecutions are under way for about 400 out of the 4,000 cases. Even this figure is disputed by many organizations in the country. Even if it were true, it is just a handful of cases out of the total number quoted above.

3. The major obstacle to the prosecution of the perpetrators is that there had been no criminal investigations into the disappearances when they occurred. The criminal investigations were prevented by special emergency regulation laws, the passage of which created the background for large-scale disappearances. The provisions of the Criminal Procedure Code relating to criminal investigations were suspended through special laws. The bodies were allowed to be disposed of without any report being filed before the courts or without any inquest. As most of the bodies were burnt there is no possibility of examining them during belated inquiries. Further, as the alleged perpetrators are the law enforcement officers themselves, there is no possibility of conducting a credible inquiry into disappearances by the normal process of criminal investigations through the agencies of the police. The demand for the appointment of a special agency for investigating disappearances has not been heeded.

4. Added to all this is the general collapse of the criminal justice system in Sri Lanka.

5. As is well known, mass disappearances affect large numbers of people who are relatives, neighbours, friends and other acquaintances of the disappeared person; they also affect the society at large and shake the moral foundation of a given society. As a result of public indifference to the fate of disappeared persons, the families of these disappeared persons have become demoralized and have had to resort to their own means to deal with the consequences of disappearance. As many efforts by them over a period of around 10 years have borne so little result the families of the disappeared have lost faith not only in the legal system but even in the civil society which has failed to respond adequately to the grave injustices done to them.

6. It remains a fundamental human obligation towards the families of the disappeared to respond to the issue of disappearances and make it a fundamental issue of concern to the community at large as well as to the State.

7. The most likely outcome of the present situation is that except for a very few cases no prosecutions will be instituted. The reason is that there had been no criminal investigations into these cases. So, despite many protests by local people and organizations, by the international

community, by the Working Group on Enforced or Involuntary Disappearances and the Commission on Human Rights itself at several of its sessions, the matter of the prosecution of the perpetrators of over 30,000 offences has reached a dead end.

8. If the matter is to be resurrected, the first step to be taken is to appoint an independent and credible commission to undertake criminal investigations into disappearance cases. A credible commission of inquiry needs to have an adequate legal mandate and resources. Sri Lanka has in many ordinary criminal cases sought the assistance of foreign criminal investigation expertise, for example, from Scotland Yard. In some investigations into mass graves, Sri Lanka had invited foreign experts. Therefore nothing is preventing foreign participation in the criminal investigations into cases of disappearances. In fact, such participation will add credibility to such a criminal investigation commission.

9. However, the appointment of such a commission can only happen if the international community, the Working Group on Enforced or Involuntary Disappearances, the United Nations High Commissioner for Human Rights and the Commission on Human Rights itself take a serious interest in this matter. They have every reason to take such an interest, what has taken place in Sri Lanka in terms of mass disappearances is a crime against humanity. The local commissions have concluded that most disappearances that occurred in Sri Lanka were killings after arrest, they have further concluded that disappearances were carried out as part of a plan approved by the highest political authorities. In terms of the number of persons killed, the Sri Lankan case is much worse than the East Timor case. It is also much worse than the case of the Chilean dictator Pinochet.

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